

REMARKS

Applicant hereby traverses the election requirement issued by the Examiner and asks for its reconsideration and withdrawal.

The applicant respectfully requests that the Examiner withdraw the species election requirement and that he concurrently examine all of the claims now in the application. The avowed purpose of the Patent and Trademark Office in requiring an election, whether part of a species or invention restriction, is the avoidance of a burdensome examination, i.e., to avoid multiple searches, etc. However, MPEP §803, second paragraph, provides:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to two distinct or independent inventions."
(Emphasis added)

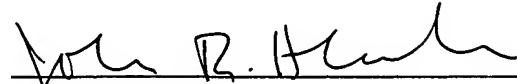
It is respectfully submitted that the examination of all of the claims in this application will not place an undue burden on the Patent Office. If the generic claim and the claims directed to the Figure 5 species are examined first, it is not understood how the Examiner will reduce his search or how the examination burden will be decreased. Surely the Examiner must search the same areas in the heat exchanger art for the heat exchanger tube configurations shown in Figures 1-4 and Figures 7-9.

Moreover, the examiner has failed to even mention Figures 1-4 that are in the application. Ironically, the applicant was not given an opportunity to elect the species shown in Figures 1-4. Figures 1-4 show a dimple construction that is clearly generic to all of the Figures. In particular, the tube construction shown in Figures 1-4 forms part of the heat exchanger "species" shown in Figures 5 and 7. In order to examine the invention illustrated by Figures 1-4, the examiner will have to search all of the areas he plans on searching for the species shown in Figures 5-9. Accordingly, it is submitted that the restriction requirement is clearly improper and all of the claims in this application should be examined concurrently.

It is respectfully submitted that the election requirement is improper and should be withdrawn.

Respectfully submitted,

Date: January 19, 2006



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